IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.77 OF 2005

Dinkar Maruti Wagh & Ors. ...Appellants

vs.

Indubai Pandurang Chavan & Ors. ...Respondents

CORAM: A.S.OKA,J.
DATE : FEBRUARY 9, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is filed by the unsuccessful Plaintiffs in the suit. The suit was filed by the Appellants for specific performance. The Appellants are seeking to enforce specifically an agreement dated 10th March 1972. The suit was filed 27 years after date of execution of the agreement i.e. on 17th April 1999.

2. Shri Patil, learned Counsel for the Appellants submitted that the suit is filed within limitation as the cause of action arose for the first time on 30th June 1998 when the legal representatives of the original vendor issued notice to the Appellant No.1 and contended that the suit agreement was not an agreement for sale but it was in the nature of a mortgage. He submitted that after receipt of the said notice the Appellants replied to the said notice on 30th April 1998 and called upon the Respondents to execute the sale deed after obtaining necessary permission from the competent authority.

Relying upon the recitals in the suit agreement he pointed out that the original vendor was under obligation to obtain sale permission from the Competent Authority and balance amount of consideration of Rs.500/- was to be paid by the Appellants at the time of execution of the conveyance. There is a recital in the agreement that till the time permission is not obtained, the time limit provided for execution of conveyance will stand extended. He relied upon the Judgment of the Apex Court reported in A.I.R. 2000 Supreme Court page No.2408 (Motilal Jain Vs. Ramdasi Devi) and submitted that it is not necessary that the averment of readiness and willingness in the plaint should be like a mathematical formula and there is sufficient compliance of the Section 16(c) of Specific Relief Act, if the averments in the plaint read together indicate the readiness and willingness. He lastly submitted that out of agreed consideration of Rs.2500/- a substantial part i.e. Rs.2000/- was paid by the Appellants to the original Defendant and therefore the Appellate Court ought not to have disturbed the decree passed in favour of the Appellants.

3. I have considered the rival submissions. It is to be noted here that in paragraph No.16 of the Judgment of the Appellate Court it is held that discretion under Section 20 of Specific Relief Act, 1963 cannot be exercised in favour of the Appellants due to gross delay and latches on their part. It is not at all the case of the Appellants that from the year 1972 till 1998 at any time the Appellants attempted to tender

balance consideration of Rs.500/- to the Respondents. No notice was issued by the Appellants for a long period of 26 years calling upon the Respondents to obtain sale permission and perform their part of the agreement. Considering the delay and latches the Appellate Court has taken a view that the discretion exercised under Section 20 of the said Act of 1963 cannot be exercised in favour of the Appellants-Plaintiffs.

4. Exercise of discretion by the Appellate Court is on the grounds which are very relevant. The Appellate Court observed that when price of Rs.2500/- for sale was fixed in the year 1972, the Respondent cannot be forced to sell the suit land for the same price after lapse of 27 years.

5. The relief of specific performance is always a discretionary relief. Such a long delay in approaching the Court for enforcing the agreement is sufficient to deny the relief to the Plaintiffs. In this view of the matter I find no fault with the decree passed by the Appellate Court. No substantial question of law arise in the Appeal. Second Appeal is dismissed with no order as to costs.

JUDGE.